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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 635

[Docket No. 120510051-2156-01]

RIN 0648- BC16

Atlantic Highly Migratory Species; Lifting Trade Restrictive Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to adjust the regulations governing the trade of tuna and tuna-like species in the North and South Atlantic Ocean to implement recommendations adopted at the 2011 meeting of the International Commission for the Conservation of Atlantic Tunas (Commission). The proposed rule would lift the trade restrictions on importing bigeye tuna from Bolivia and Georgia. Additionally, the proposed rule would make administrative changes to the section containing species-specific harmonized tariff codes in support of the International Trade Program.

DATES: Written comments must be received on or before [insert date 30 calendar days after the date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by “NMFS-NOAA-2012-0117”, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal, <http://www.regulations.gov> . To submit comments via the e-Rulemaking Portal, first

click the “submit a comment” icon, then enter “NOAA-NMFS-2012-0117” in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- Fax: 978-281-9347, Attn: Tom Warren
- Mail: Thomas Warren, Highly Migratory Species Management Division, NMFS, 55 Great Republic Drive, Gloucester, MA 01930
- Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, or to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. To be considered, electronic comments must be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>. Do not submit electronic comments to individual NMFS staff.

Copies of the 2006 Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and other relevant documents are available from the Highly Migratory Species Management Division website at www.nmfs.noaa.gov/sfa/hms.

FOR FURTHER INFORMATION CONTACT: Tom Warren at 978-281-9260, or LeAnn Hogan at 301-427-8503.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic tuna fisheries are managed under the Consolidated HMS FMP and regulations at 50 CFR part 635, pursuant to the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Atlantic Tunas Convention Act (ATCA). Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out ICCAT Recommendations.

Trade Measures

In 2002 and 2003, the Commission adopted binding measures for Parties to prohibit the imports of Atlantic bigeye tuna and its products from Bolivia and Georgia, respectively. Specifically, Recommendations 02-17 and 03-18 prohibited the imports to address illegal, unreported, and unregulated catches of tuna (especially bigeye tuna) by large-scale Bolivian and Georgian longline vessels that operated in a manner that diminished the effectiveness of the Commission measures. Recommendation 02-17 expressed concern regarding the overfished status of bigeye tuna in the Atlantic Ocean and noted the Commission had reviewed information that Bolivian vessels fishing for Atlantic bigeye tuna had continued to operate in a manner that diminished the effectiveness of the Commission conservation and management measures. Similarly, Recommendation 03-18 expressed concern regarding the overfished status of bigeye tuna in the Atlantic Ocean, and the Commission had reviewed information that Georgian vessels had continued to operate in a manner that diminished the effectiveness of Commission conservation and management measures. Therefore, in 2004, NMFS published a final rule (69 FR 70396; December 6, 2004) that implemented the Commission recommendations. The final rule stated that when Bolivia or Georgia brought its fishing practices into consistency with the

Commission conservation and management measures, NMFS would take action to remove the appropriate import restrictions.

At its 2011 annual meeting, the Commission examined recent actions of Bolivia and Georgia, and determined that the actions of their vessels no longer diminish the effectiveness of the Commission's conservation and management measures. Some of the relevant considerations of the Commission were as follows:

- Bolivia and Georgia have been responsive to Commission requests for information on actions taken to control their vessels.
- Since 2006, Bolivia has not registered any fishing vessels to carry out fishing-related activities in the Convention area, and information available to the Commission has indicated that Bolivia has not fished for Commission species in recent years.
- Georgia has recently taken action to de-register those of its vessels fishing without authorization in the Convention area and has considered increased participation in the work of the Commission.

Thus, the Commission adopted Recommendation 11-19, which requires Parties to lift import prohibitions on Atlantic bigeye tuna from Bolivia and Georgia as soon as possible in accordance with domestic procedures. When the import prohibitions were implemented in the 2004 final rule, neither Bolivia nor Georgia had exported Atlantic bigeye tuna to the United States in the past 10 years; therefore, NMFS determined that the import prohibitions would have no socioeconomic impact on fishery participants. Because there were no imports of Atlantic bigeye tuna from these countries prior to the implementation of the prohibitions, and because NMFS does not expect imports in the future, NMFS does not expect that lifting the prohibitions

would result in socioeconomic impacts on U.S. entities. Thus, we consider lifting the Atlantic bigeye tuna import prohibitions in this rule to be administrative in nature.

Consistent with the regulations at 50 CFR § 635.40(c), for 1 year after the date of filing of the final rule lifting the import restrictions, every shipment of fish in any form that was subject to the import restrictions will continue to be denied entry, unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States certifying that no portion of the shipment is composed of fish taken prior to or during the import restriction.

Harmonized Tariff Codes

NMFS also proposes administrative changes in support of the International Trade Permit program. Importers, exporters, and re-exporters of Atlantic, Pacific, and Southern bluefin tuna, swordfish, frozen bigeye tuna, and shark fins must obtain an International Trade Permit consistent with regulations at 50 CFR 300, subpart M. Permit holders must include the species-specific harmonized tariff codes on the necessary trade documentation when trading these species. The Harmonized System is an international product nomenclature system developed by the World Customs Organization. It is updated every 5 years, and the most recent update occurred in 2012, with subsequent modifications to the Harmonized Tariff Schedule of the United States. Thus, the section of the regulations that include harmonized tariff codes for highly migratory species products located at 50 CFR 300.184 should be changed accordingly. The proposed changes are not expected to have economic impacts because they are administrative in nature and do not alter the permit holders' substantive obligations; rather, the proposed changes would simply update the harmonized tariff codes to ensure that permit holders have the most recent information in order to simplify compliance with the regulations. The

Harmonized Tariff Schedule of the United States is published by the U.S. International Trade Commission. The portion pertaining to fish, including HMS species (chapter 3), is available at the following website: <http://www.usitc.gov/publications/docs/tata/hts/bychapter/1202C03.pdf>.

Request for Comments

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax. NMFS solicits comments on this proposed rule by [insert date 30 calendar days after date of publication in the FEDERAL REGISTER].

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (Commission), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out Commission recommendations.

In 2002 and 2003, the Commission adopted binding measures to prohibit the imports of Atlantic bigeye tuna and its products from Bolivia and Georgia, respectively. Specifically, Recommendations 02-17 and 03-18 prohibited the imports to address the issue of unreported and unregulated catches of tuna (especially bigeye tuna) by large-scale Bolivian and Georgian longline vessels that operated in a manner that diminished the effectiveness of Commission measures. In 2004, the National Marine Fisheries Service (NMFS) published a final rule (69 FR 70396; December 6, 2004) implementing the recommendations.

At its 2011 annual meeting, the Commission determined that Bolivian and Georgian vessels no longer diminish the effectiveness of the Commission's conservation and management measures. As a result, the Commission adopted Recommendation 11-19, which requires Parties to lift import prohibitions on Atlantic bigeye tuna from Bolivia and Georgia as soon as possible in accordance with domestic procedures. Prior to 2004, neither Bolivia nor Georgia had exported Atlantic bigeye tuna to the United States in the past 10 years, so NMFS determined that the import prohibitions would have no socioeconomic impact on fishery participants. Because there were no imports of Atlantic bigeye tuna from these countries prior to the implementation of the prohibitions, and because NMFS does not anticipate imports in the future, NMFS does not expect that lifting the prohibitions would result in socioeconomic impacts on U.S. entities. Thus, we consider the lifting of the Atlantic bigeye tuna import prohibitions in this rule to be administrative in nature.

In this rulemaking, we would also consider administrative changes in support of the International Trade Permit (ITP) program. Importers, exporters and re-exporters of Atlantic, Pacific and Southern bluefin tuna, swordfish, frozen bigeye tuna, and shark fins must obtain an ITP consistent with regulations at 50 CFR 300, subpart M. There are currently 241 small entities

that hold an ITP. Permit holders must include the species-specific harmonized tariff codes on the necessary trade documentation when trading these species. The Harmonized System is an international product nomenclature system developed by the World Customs Organization. It is updated every 5 years, and the most recent update occurred in 2012, with subsequent modifications to the Harmonized Tariff Schedule of the United States. Because 50 CFR 300.184 currently lists the previous harmonized tariff codes for highly migratory species products, the regulations need to be changed to be consistent with the recent changes to the Harmonized Tariff Schedule of the United States. These proposed administrative changes are not expected to have economic impacts because they do not create or alter any substantive obligations for ITP holders or other regulated entities; rather, the changes are necessary in order to maintain consistency with current trade regulations and to ensure that ITP holders have the most recent information in order to simplify compliance with the regulations.

As described above, the proposed changes in this rule are administrative in nature and, if implemented, would not have a significant economic impact on a substantial number of small entities. Because the proposed changes would not have a significant impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects

50 CFR Part 300

Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 21, 2012.

Paul N. Doremus,
Deputy Assistant Administrator
for Operations,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300 and 635 are proposed to be amended as follows:

Part 300--INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

2. Section 300.184 is revised to read as follows:

§ 300.184 Species subject to permitting, documentation, reporting, and recordkeeping requirements.

(a) Except as noted at (b), the following fish or fish products are subject to the requirements of this subpart, regardless of ocean area of catch, and must be accompanied by the appropriate heading or subheading numbers from the Harmonized Tariff Schedule of the United States (HTS).

- (1) bluefin tuna,
- (2) southern bluefin tuna,
- (3) frozen bigeye tuna,
- (4) swordfish, and
- (5) shark fins.

(b) For bluefin tuna, southern bluefin tuna, frozen bigeye tuna, and swordfish, fish parts other than meat (e.g., heads, eyes, roe, guts, and tails) may be imported without documentation.

PART 635–ATLANTIC HIGHLY MIGRATORY SPECIES

3. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

§ 635.41 [Amended]

4. In § 635.41, remove and reserve paragraph (a).

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